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Report by the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to El Salvador

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human right to safe drinking water and sanitation, submitted in compliance with resolution 24/18 of the Human Rights Council, on his visit to El Salvador from 11 to 18 May 2016.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to El Salvador*

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* Circulated in the language of submission and English only.

I. Introduction

1. The Special Rapporteur on the human right to safe drinking water and sanitation, Mr. Léo Heller, carried out a visit from 11 to 18 May 2016 to El Salvador, at the invitation of the Government, with the aim of assessing the progress made and the challenges faced in realizing the human rights to safe drinking water and sanitation.

2. During the eight-day mission, the Special Rapporteur had the opportunity to meet with the Ministers of Foreign Affairs, of the Environment and Natural Resources and of Health. He also met with the Attorney General of the Nation, the President of the Supreme Court of Justice and the Procurator for the Defence of Human Rights; as well as the President of the National Water Mains and Sewers Administration (ANDA), the Secretary for Issues of Vulnerability of the Ministry of Territorial Governance and Development, the President of the Social Investment Fund for Local Development, representatives of the legislative branch, United Nations agencies and representatives of the international agencies. He took part in a meeting of the National Council on Environmental Stability and Vulnerability and also spoke with representatives of the indigenous peoples, civil society organizations and the private sector.

3. The Special Rapporteur visited the city of San Salvador, as well as a teaching centre and rural and urban communities in the municipalities of Ilopango and Nejapa and the La Esperanza Penal Centre in the municipality of Ayutuxtepeque, all of which are located in the department of San Salvador. During those visits he spoke with human rights defenders, and community leaders facing problems of access to water, persons deprived of their liberty and, more generally, with women and children in rural and urban areas responsible for finding water for their families.

4. The Special Rapporteur wishes to thank the Government of El Salvador for its openness prior to and during the mission, for granting his request for access to a number of locations and for providing all the necessary documentation. He would also like to thank all of those persons whom he had the opportunity to meet for their time and openness and the United Nations Country Team for its support in organizing the visit.

5. Over the past few decades, El Salvador has made impressive progress in the water and sanitation sector. According to United Nations Millennium Development Goals monitoring, El Salvador reached and indeed, far surpassed, its water and sanitation goals in 2015, with almost 94 per cent of the population obtaining improved access to water. Likewise, in 2015, 75 per cent of the population gained improved access to sanitation services. During the period 1990-2015, access to water through household connections rose significantly, by 35 per cent at the national level, with 78 per cent of the total population benefiting from coverage in 2015.[1] The Special Rapporteur recognizes the efforts of the Government that made such progress possible, in particular over the past few years.

6. However, it should be pointed out that, as a part of monitoring under the Millennium Development Goals mechanism, the concept of access to water and sanitation employed includes certain types of solutions that do not always meet the standard set by the definition of the human right to water and sanitation used by the Special Rapporteur in his assessment of the situation in El Salvador.

[1] World Health Organization (WHO) and United Nations Children's Fund (UNICEF), *Progress on Sanitation and Drinking Water: 2015 Update and MDG Assessment*, available at http://www.wssinfo.org/fileadmin/user_upload/resources/JMP-Update-report-2015_English.pdf.

7. According to the regional study published by the Office for the Coordination of Humanitarian Affairs, Central America is undergoing the worst drought in decades. As of January 2016, it is estimated that, in El Salvador, 825,000 persons (approximately 20 per cent of the population) were living in a situation of food insecurity on account of the drought.[2] In mid-2015, the International Federation of Red Cross and Red Crescent Societies identified the rural population of the eastern region known as the "Dry Corridor", located in the departments of La Unión, San Miguel, Morazán and Usulután,[3] as being most at risk.

8. Despite the availability of this study and of a clear definition of the populations at risk since mid-2015, it was not until 13 April 2016 that the Government of El Salvador declared a state of emergency on account of the water shortage in the country. Significantly, the declaration of a state of emergency, in the form of an orange alert, covered only the San Salvador Metropolitan Area, excluding those populations previously identified as being at high risk. The number of water-shortage protests on the outskirts of the San Salvador Metropolitan Area increased in the weeks leading up to the declaration of the state of emergency.

9. According to the Ministry of the Environment and Natural Resources, the ever-worsening effects of climate change have been clearly visible for the past few years. In 2013, the Ministry launched a national climate change strategy to tackle those challenges.[4]

10. In situations of crisis relating to access to water, such as that brought on by the current drought in El Salvador, the weaknesses of the system become more apparent and inequality between different groups of persons with regard to access, more acute. In general, those most affected are women and girls, who are responsible for ensuring that their families have access to water. In addition, the following categories of persons are generally particularly badly affected: persons deprived of their liberty, rural populations, persons living in situations of poverty or in street situations, persons with disabilities and older persons. It has also become clear that the crisis has had a major impact on persons living in gang areas, which are sometimes out of bounds to suppliers attempting to make emergency water deliveries.

11. Although they have given rise to a dramatic situation, the intense drought and its visible effects should be viewed by the Government and other key actors in the country as a learning opportunity. All of this highlights the need to place the human rights to water and sanitation at the centre of national climate change plans and policies. Such an approach would enable the Government to consolidate the progress made to date and to ensure that persons living in situations of vulnerability do not bear the brunt of the crisis.

12. In order to meet the short- and long-term human rights obligations of El Salvador, it is important to highlight that work gradually to realize the human rights to water and to sanitation would, in turn, help El Salvador to achieve the Sustainable Development Goals and in particular, but not exclusively, Goal 6 on ensuring universal access to water and

[2] Office for the Coordination of Humanitarian Affairs, Humanitarian Country Team, "Drought in Central America in 2015: Situation Report (as of October 6, 2015)", January 2016, p. 2, available at www.redhum.org/uploads/documentos/pdf/Sitrep_OCHA-ROLAC_Drought_in_CA_EN_061015-20151006-AL-17144.pdf.

[3] International Federation of Red Cross and Red Crescent Societies, "Emergency Plan of Action (EPoA) El Salvador Drought", August 2015, available at http://reliefweb.int/sites/reliefweb.int/files/resources/MDRSV009do.pdf.

[4] www.marn.gob.sv/estrategia-nacional-de-cambio-climatico/.

sanitation by 2030, which is clearly linked to the principles of the human rights to water and sanitation.[5]

II. Legal and institutional frameworks and accountability

A. Legal framework

13. El Salvador has ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. These international human rights instruments include legal obligations relating to the human right to life and the human rights to water and sanitation.[6] El Salvador has also ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which enables individuals to submit cases of alleged violations of their human rights to the Committee on Economic, Social and Cultural Rights, after having exhausted all available domestic remedies.

14. In 2010, the human right to water and sanitation was explicitly recognized by the General Assembly in its resolution 64/292, which was supported by El Salvador, and by the Human Rights Council in its resolution 15/9, which was adopted without a vote. The Special Rapporteur commends El Salvador for having supported both resolutions.

15. Within the inter-American system, El Salvador is a party to the American Convention on Human Rights (Pact of San José, Costa Rica) and to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Although neither of these treaties makes explicit mention of the human rights to water and sanitation, both rights are essential prerequisites for effective enjoyment of various other human rights, such as the right to life, the right to a decent standard of living, the right to health, the right to education, the right to proper housing and the right to food.[7]

16. In accordance with these international frameworks, the State is required to take concrete steps gradually to realize the human rights to water and sanitation, making maximum use of the resources available. More specifically, the human right to water grants to all people, without any form of discrimination, the right of access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The human right to sanitation grants to all people the right to physically accessible and affordable sanitation services that are safe, hygienic and acceptable and which offer privacy and dignity.

17. Fulfilment of these rights also includes the need to provide access to proper and affordable hygiene practices, such as hand washing and management of menstrual hygiene. The Government is obliged immediately to guarantee access to water and sanitation facilities and services without discrimination, in particular for vulnerable or marginalized groups.

18. The international commitments made by El Salvador in respect of the rights to water and sanitation have not yet been incorporated into its domestic legislation.

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[5] Available at http://los17ods.org/los-17-objetivos-para-2030/agua/.

[6] Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and article 24 of the Convention on the Rights of the Child.

[7] https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm and http://www.oas.org/juridico/english/treaties/a-52.html.

19. First of all, the Constitution of El Salvador makes no provision for the rights to water and sanitation. In April 2012 the legislative assembly initially approved reform of article 69 of the Constitution, but the amendment has not yet been ratified. In the same connection, on 8 April 2015, the Office of the Human Rights Advocate issued a resolution establishing the responsibility of the 2012 to 2015 plenary legislative assembly for failing in its duty to adopt legislative measures to give effect to and properly to guarantee the exercise of, and to adapt domestic legislation to the requirements deriving from international law and for failing to comply with the repeated calls from the Office in that respect.[8]

20. Accordingly, the Special Rapporteur urges the legislative assembly to ratify the amendment to article 69 of the Constitution and explicitly to incorporate into the final text the expression "human rights to water and sanitation", which are absent from the proposal currently under consideration. The explicit inclusion of these rights into the Constitution will help ensure their effective recognition and implementation, thereby guaranteeing those rights in national legislation and judicial decisions. At all events, it is essential to point out that on 15 December 2014, the Constitutional Chamber of the Supreme Court recognized the right to water in its case law, and interpreted it as one of the fundamental rights recognized by the Constitution.[9]

21. Since 2012, a general law on water resources has been under discussion before the legislative assembly. The main differences between the proposals put forward for discussion concern the composition of the governing body and the clear references made in the law to the principle that priority should be given to the use of water for human consumption over other uses.

22. The Special Rapporteur believes it to be essential for all parties involved in these negotiations to realize that society as a whole will benefit from a model that ensures water resources are managed efficiently, on an equal basis and democratically. In addition, it is of overriding importance that the law should place at the heart of any policy the human rights to water and sanitation and that it should make it clear that the use of water for human consumption must have priority. Accordingly, the Special Rapporteur calls on the members of the legislative assembly to achieve a consensus on the adoption of a law that assigns priority to the interests of citizens and guarantees the normative substance and principles of the human rights to water and sanitation.

23. It is equally essential for the body responsible for the water policy introduced by the law to be transparent and participatory, and for the State to play a leading role. Stewardship should reflect the positive initiatives recently taken by the State, such as the establishment of the National Council on Environmental Sustainability and Vulnerability, involving broad participation by the leading actors in the sector and giving priority to the participation of civil society and representatives of those groups most deprived in terms of access to water.

24. Finally, it will be essential to adopt a framework law for the water resources and sanitation subsector defined by the law, which will focus on the fulfilment of human rights and provide guidance for the sector's institutions and guarantee proper regulation of those services.

[8] Office of the Human Rights Advocate (2015), resolution of 8 April 2015, Exp. SS-0060-2015, available at www.pddh.gob.sv.

[9] Constitutional Chamber of the Supreme Court, *amparo* proceedings 513-2012, final decision, 15 December 2014.

B. Institutional framework

25. El Salvador lacks an institutional framework to ensure coordinated and proper management of water resources. This function is performed by more than twenty different bodies which share responsibility for distributing and supervising water resources in El Salvador; they include, inter alia, municipal authorities, rural water management boards and housing development agencies. For example, the National Water Mains and Sewers Administration is the governing body and main service provider in urban areas. For its part, the Ministry of Health is responsible for monitoring the quality of drinking water, while the Ministry of the Environment and Natural Resources is responsible for the management of water resources. In turn, the Ministry of Economics approves changes to water rates.

26. The National Water Mains and Sewers Administration provides services to approximately 64 per cent of the country's population and to some 90 per cent of the urban population, with a total of approximately 800,000 (domestic) users in 156 of the 262 towns in El Salvador.[10] Furthermore, according to same Administration, El Salvador has 2,323 rural water networks that are not interconnected, not linked to the National Water Mains and Sewers Administration and managed by community associations: rural water management boards (73 per cent), water committees (16 per cent) and municipal authorities (11 per cent).[11]

27. The rural water boards are autonomous agencies that serve the populations of low-income rural communities and are organized so as to provide communal water supply networks. They do not manage sanitation services. These systems are non-profit making, but collect fees to cover operating and maintenance costs. In principle, the rural water management boards receive no assistance from the State, as they do not fall within the existing normative categories and they are obliged to pay for drawing water at prices equivalent to those paid by the national company. The absence of State support hampers the supply of clean drinking water in rural areas.

28. On 2 May 2016, the Government of El Salvador, acting through the National Water Mains and Sewers Administration, proposed to the legislative assembly that activities, works and projects carried out by community bodies for the purpose of providing drinking water on a non-profit basis be declared of public utility and in the interest of society.

29. Urgent measures need to be adopted in respect of the institutional organization of the water and sanitation sector in El Salvador so as to rationalize the way in which it provides services to the different types of community in the country. The national plan for water and sanitation, development of which began under the coordination of the National Water Mains and Sewers Administration, could well provide a useful framework for achieving a more rational institutional set-up. Accordingly, the Special Rapporteur recommends that this plan should be developed through a highly participatory process that includes other service providers, such as the rural water boards and representatives of civil society. The Special Rapporteur also urges those responsible for its development to set the normative substance of human rights at the core of all their assessments, proposals and recommendations.

30. The Special Rapporteur calls for the establishment of an institutional structure to manage water and sanitation and of an independent regulatory body competent to ensure

[10] National Water Mains and Sewers Administration, *Actualización de Subsidios* (Update on subsidies), January 2016.

[11] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2015.

that those who supply water comply with human rights. Such an agency will need to ensure that the public takes part in decision-making by providing sufficient and suitable information and by ensuring due accountability; it will also need to ensure that water and sanitation are affordable for all.

31. Lastly, the Special Rapporteur draws attention to the obligation of the Government, even when water supply and sanitation are delegated to third parties — such as the rural water boards or private, public or joint enterprises — to supervise and monitor them so as to ensure they guarantee all aspects of human rights.

C. Access to information and accountability

32. In El Salvador decisions on water rationing measures are not systematically publicized and there seems to be no standard rule for informing users. Only in respect of the orange warning announced in April 2016 was more detailed information on the measures provided by the national media.

33. Several people told the Special Rapporteur they were dissatisfied with the lack of proper notice of water rationing measures introduced by the institutions. Several people described the difficulty of planning and preparing for water rationing if they were given no prior notice or only informed late. During the visit, individual efforts to cope with the problems caused by water rationing, especially by women and girls who were compelled to fetch water from distribution points, were observed.

34. Regarding the lack of proper and timely information, the Special Rapporteur also learned that the results of quality tests of water for human consumption are neither made public nor sent to users.

35. In El Salvador there is no independent regulatory mechanism to monitor the performance of either the National Water Mains and Sewers Administration or the local authorities and agencies providing water and sanitation services.

36. However, the mandate of the Office of the Human Rights Advocate, which is part of the Public Legal Service, includes ensuring respect for and guaranteeing human rights, investigating, of its own motion or in response to a complaint, cases involving violations of human rights, helping the alleged victims of human rights violations and supervising the response of the public administration to those persons. The Office of the Human Rights Advocate is therefore a place to which people may take their concerns about human rights. This is the key to holding the authorities responsible for the rights to water and sanitation.

37. As regards the international sphere, the Special Rapporteur commends the Government for its ratification of both the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and encourages it to promote the use of that mechanism by the alleged victims of human rights violations.

III. The human rights to water and sanitation

A. Accessibility

38. Water and sanitation services must be accessible to all persons in dwellings, health and educational establishments and other public institutions and spaces, including workplaces.

39. In recent decades, there has been a significant improvement in the accessibility of water supply and sanitation services in El Salvador. In 2015, an international survey ranked

El Salvador first out of 117 countries, as the country which had made most progress in the world in increasing access to water and sanitation and in reducing inequality of access to them.[12] This index compares the rates at which countries with similar levels of coverage in terms of water supply and sanitation improve equality of access to water and sanitation.

1. Access to water

40. In spite of the progress described, according to the information provided by the National Water Mains and Sewers Administration, in 2016 more than 600,000 people in El Salvador are without any drinking water or sanitation service. In addition, more than 1 million people have access to only an inadequate water supply, with no guarantee as to quantity or drinking quality.[13]

41. As regards people with household connections, in 2015 there was also a wide gap between rural and urban areas: less than 60 per cent of houses were connected to the water network in rural areas, in comparison with 85 per cent in towns. People with no household connection draw water from artesian wells, rivers and lakes or collect rainwater.

42. In terms of physical access, in 2013 households with no household connection, who had to fetch water for domestic use, spent on average 39 minutes each day fetching water. If we assume that they fetched water 5.6 days each week, this means the task took from 3 to 4 hours each week.[14]

2. Access to sanitation

43. Between 1990 and 2015, the proportion of persons in El Salvador with access to improved sanitation services increased significantly, from 51 to 75 per cent. This progress is particularly marked in urban areas, where in 2015, 82 per cent of people had access to improved sanitation, in comparison with only 60 per cent in rural areas. Once again it is important to point out that these figures concern improved access to sanitation, which does not necessarily meet the requirements of the human right to sanitation. Moreover, 7 per cent of El Salvador's rural population resort to open defecation.

44. According to the 2014 National Health Survey, 37.4 per cent of households with household sanitation have a toilet connected to the sewerage system, while the remainder have individual solutions.[15]

45. The statistics indicate that part of the population classified as having access to sanitation services may not have proper access. Sometimes latrines that are unsafe or that do not ensure privacy are used. In addition, from the environmental and sanitary angle, disposal of the excreta collected from latrines may not be safely managed for users.

[12] Ryan Cronk et al., "The WASH Performance Index Report", available at http://waterinstitute.unc.edu/wash-performance-index-report/.

[13] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*. (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2015.

[14] Department for Transparency, Access to Information and Civic Participation, Ministry of Economics (see resolution RAIP No. 0265/2015, of 17 September 2015).

[15] Ministry of Health/National Institute of Health and United Nations Children's Fund (2015), *Encuesta Nacional de Salud 2014 — Encuesta de Indicadores Múltiples por Conglomerados 2014. Resultados Principales* (Multiple indicator conglomerate survey 2014, main findings).

3. The situation in educational establishments

46. According to data from the Ministry of Education, in 2014 more than 1,100 schools in El Salvador had no piped drinking water. In other words, more than 10 per cent of educational establishments were without piped drinking water and were presumably obliged to draw water from alternative sources, such as rivers, or to collect rainwater. In the area covered by the National Water Mains and Sewers Administration, the Ministry of Education covers the cost, but the problem is more acute in rural schools, where there is no clear public policy on how to ensure pupils have access to water or on how to guarantee access to sanitation.

47. The Special Rapporteur visited a rural educational establishment where the State does not provide a water supply. The centre's director told him that he was personally responsible for ensuring that the pupils had access to water. During periods without rain, he had sometimes been obliged to purchase water at a price that was as high as 75 dollars per 10,000 litre tank. This creates inequality in comparison with educational establishments in urban areas, since it shifts the burden of providing access to drinking water and sanitation onto the directors of the centres.

B. Availability

48. The main sources of drinking water in El Salvador are groundwater and surface water, such as the river Lempa, which supplies a large part of the San Salvador metropolitan area. Some 70 per cent of the water extracted in the country is drawn from surface water sources, and 30 per cent from groundwater.[16]

49. The World Bank has estimated that El Salvador possesses an annual volume of 2,559 cubic metres of renewable internal freshwater per capita.[17] Ninety five per cent of precipitation falls from May to October and there are frequent and severe droughts during the driest months.

50. Management of water sources in El Salvador has had to deal with the pollution of a considerable proportion of the country's surface waters, essentially caused by untreated urban wastewaters and runoff from agriculture and industry. The river Acelguate, which drains the metropolitan areas of the capital, is severely polluted, making it impossible to use its water after standard treatment procedures.

51. Problems of quantity and quality of surface water may worsen if no agreements are reached between the countries of the region. In the case of the river Lempa, which is of strategic importance to El Salvador, proper management presupposes cooperation with Guatemala and Honduras. Accordingly, the Special Rapporteur urges all three countries to build a constructive relationship, via bilateral or trilateral treaties, to achieve satisfactory management of the transboundary river basins, with the human rights to water and sanitation at their core.

52. A further factor affecting the availability of water is the high wastage of the country's water supply networks. According to the National Water Mains and Sewers Administration, in 2014, in the country as a whole, 47.7 per cent of water was not billed for (on account of leaks and illegal connections).[18] This nationwide level of leakage, which

[16] Food and Agriculture Organization of the United Nations, 2005, available at www.fao.org/nr/water/aquastat/countries_regions/Profile_segments/SLV-WU_esp.stm.

[17] http://data.worldbank.org/indicator/ER.H2O.INTR.PC.

[18] National Water Mains and Sewers Administration, *Memoria de Labores* (Memorandum of activities) 2013, pp. 24, 30 and 35.

may be higher in the metropolitan area of San Salvador, must be drastically reduced if it is not to affect the availability of water.

Irregular access to water

53. In rural areas of El Salvador only 41 per cent of water supply systems, apart from those covered by the National Water Mains and Sewers Administration, provide service for more than 12 hours each day, and more than 21 per cent of the systems operate less than four days per week or less than two hours per day.[19]

54. In addition, in the San Salvador metropolitan the practice of applying water rationing measures in the areas supplied by the National Water Mains and Sewers Administration is apparently widespread. The practice has allegedly increased during the drought months, and in particular since April 2016, although rationing also appears to have been recurrent outside the current crisis period. The Special Rapporteur received information about intermittent water supply, with some regions having access for only a few hours at night, a few hours a week or even each month.

55. The people interviewed during the mission said that they have to come up with individual solutions to the problems caused by the water supply being cut off. Those with the means to do so are able to invest in large volume storage facilities which give them better access to water than people without the means. The Special Rapporteur also heard that some people store water in uncovered plastic tanks and buckets, posing a threat to water quality.

56. Improper water storage may have undesirable consequences, as with the spread in the transmission of arbovirus infections such as dengue, Chikungunya and Zika. The World Health Organization has declared the transmission of the Zika virus to be a public health emergency of international importance and El Salvador is one of the 24 countries in the Americas to be affected by the current epidemic.

57. Experience has shown water rationing by means of intermittent supply to be a false economy, as it inevitably leads to increased wastage and affects quality. The significant initiatives adopted by the Government to extend water security need to be reinforced so as to ensure continuous supply 24 hours a day, 7 days a week.

C. Quality

58. In El Salvador, the normative framework on requirements for water quality for human consumption sets out the respective roles of the service providers and of the Ministry of Health for monitoring and supervising water quality. According to the National Water Mains and Sewers Administration and the Ministry of Health, samples from the water monitoring carried out by them show water in El Salvador to be safe for human consumption.

59. During 2014, the National Water Mains and Sewers Administration conducted 10,142 microbiological tests and 3,537 physical and chemical tests nationwide. In addition, the Ministry of Health carries out complementary analyses of water quality, on the basis of bacteriological, physical and chemical parameters, including levels of heavy metal concentration. According to the results for 2015, out of 8,410 analyses, 515 samples (i.e. 6.12 per cent of the results) failed to meet the biological standards (total faecal coliform

[19] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2015.

bacteria or Escherichia coli). As regards physical and chemical parameters, out of 727 samples, 55.6 per cent were outside the norm, especially on account of a lack of residual chlorine. These findings give cause for concern about the need for rigorous evaluations and for measures to rectify the discrepancies detected.

60. The lack of effective information exchange between the two institutions should also be mentioned. The National Water Mains and Sewers Administration and other service providers should systematically inform the Ministry of Health of the results of its water quality tests to enable it to conduct a more comprehensive assessment of any risk for human health.

61. There are a number of causes for concern about potential threats to the quality of water for human consumption. During the visit, a number of persons mentioned uncontrolled use in farming of agricultural chemicals, some of which are even banned in other countries and which water treatment plants barely eliminate. Another risk factor for water pollution is the irregular supply already mentioned. A repeated lack of water in pipes may lead to increased pollution from infiltration by harmful substances. Furthermore, the obsolete infrastructure, in which asbestos-cement pipes are present, poses a threat to the quality of water for human consumption.

62. As far as the water supply not provided by the National Water Mains and Sewers Administration is concerned, only 1.5 per cent of the 2,325 water supply networks operated by the rural water boards comply with chlorination requirements.[20] The Special Rapporteur had a chance to talk to a mother in a rural community who said she had access only to a water source close to the heavily polluted river Acelguate. She said that the State provided people with chlorine, but only irregularly, and that her children had suffered from intestinal disorders caused by parasites, probably because the water they drank was polluted by faecal matter. The Ministry of Health is responsible for testing water quality in rural areas, but users are not informed of the results of its tests.

63. According to the Multipurpose Household Survey, in 2014, 56 per cent of households nationwide disposed of excreta and wastewater in the street. There is a sharp contrast between rural areas, where 90 per cent dispose of wastewater in this way, and urban areas, where 37 per cent do so.[21]

64. In conjunction with the almost complete lack of treatment of wastewater collected by the sewerage network, this state of affairs has a huge impact on water in the environment, with repercussions on the protection and fulfilment of human rights, since it undermines the exercise of their rights by the populations affected by water pollution. In this respect, due recognition should be given to the planning effort to rehabilitate environmental water resources, headed by the Ministry of the Environment and Natural Resources, and which include the construction of water treatment plants, which have put the issue on the national planning agenda. In this connection, the Ministry is taking steps to prevent and monitor pollution by means of inventories of emissions and concentrations in receiving environments, and plans for prior treatment of discharges.[22]

[20] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2016.

[21] Available at www.digestyc.gob.sv/.

[22] Environment Act.

D. Affordability

65. In recent years the National Water Mains and Sewers Administration has taken steps to adjust its rates structure so as to adapt cross-subsidization to real circumstances and to enable the agency to balance its budget.

66. Subsidies are granted in accordance with the category of consumer (industrial/commercial and residential/public) and by group of consumer. In September 2015, the National Water Mains and Sewers Administration published its new rates. Under this new review of rates, the highest increases applied to households with the highest levels of consumption, with the aim of granting the subsidy to people with the lowest incomes. Under the system, the lowest rate will apply to those who consume up to 20 cubic metres per month, who will be unaffected by the increase in rates. According to the National Water Mains and Sewers Administration, until the change, subsidies were granted for up to 44 cubic metres, thereby benefiting 98 per cent of consumers charged the domestic rate; at present, the subsidy applies to consumption of up to 34 cubic metres and benefits 97 per cent of consumers charged the domestic rate. The cost of the subsidy for the Administration would fall from 75 to approximately 40 million dollars, in the long term enabling the National Water Mains and Sewers Administration to achieve a more balanced budget.[21]

67. According to information given to the Special Rapporteur by a number of different social players and groups, the increased rates were not introduced transparently and there were complaints from people affected by sudden increases.

68. The Special Rapporteur recommends that measures to revise rates be conducted transparently and in a participatory manner. The Special Rapporteur also urges the national authorities to conduct research to determine whether the schedule of progressive block rates effectively guarantees cross-subsidization through financial transfers from the richest to the poorest. The assumption that lower-income families tend to consume less water does not necessarily hold. If this assumption is used as the basis for the model, it may pose problems of affordability for families who deserve to be subsidized.

69. There are situations in El Salvador that pose problems in relation to affordability. In particular, people who live in areas not covered by the National Water Mains and Sewers Administration tend to pay high prices for water and sanitation services. The Special Rapporteur was informed about people working on the coffee harvest and sugar-cane cultivation who earn 4.5 dollars a day (22.5 dollars a week) and who pay 4 dollars a week to acquire access to water, meaning they spend almost 18 per cent of their family income on water; this is unacceptable in terms of the human rights to water. It is also known that people connected to the collective networks, especially in towns, spend a far lower proportion of their income on access to water.

70. The Special Rapporteur also learned that neither the national nor the local authorities either support or provide guidance for the construction of individual sanitation solutions or help with maintenance so as to ensure proper collection and disposal of sludge. Such a lack of initiative by the State leads to problems of affordability, as it may entail high costs for individuals. It is important to continue to expand efforts to provide access to sanitation services in rural areas. The Special Rapporteur had the opportunity to acquaint himself with good practices adopted by the Social Investment Fund for Local Development in order to provide better access to sanitation, and which also foster and strengthen community management and organization. These practices have good potential for replication.

[21] National Water Mains and Sewers Administration, *Actualización de Subsidios* (Subsidies update), January 2016.

E. Sustainability

71. Measurements carried out by the National Water Mains and Sewers Administration show that there is a marked seasonal fall in rates of flow in measuring springs and wells throughout the country. Overexploitation of sources that are strategic for human consumption, such as surface aquifers and springs was reported.[24] The Special Rapporteur draws the attention of the Government of El Salvador to the obligation of States to guarantee the rights to water sustainably and without discrimination, for both present and future generations.[25]

72. The Special Rapporteur learned of a critical situation cause by overexploitation, which above all affects the aquifer located in the towns of Quetzaltepeque and Nejapa, where there is a conflict over water use. The aquifer in question is vital to domestic use for 25 per cent of the population of the capital's metropolitan area.[26] During the visit, the Special rapporteur learned of the presence of a bottling plant, La Constancia ILC, a subsidy of SABMiller, which draws large volumes of water for its commercial production of carbonated drinks, waters, juices and beers and which has plans for a possible expansion of its industrial activities.

73. On account of the potential impact of large-scale investment projects on the availability of water, the State should continue to exercise caution in granting new permits to harness water resources; this approach is illustrated by its decision, in December 2015, to bore a new measuring well to assess the impact on groundwater levels and the behaviour of the aquifer as a result of current extraction in the towns of Quetzaltepeque and Nejapa, as a prerequisite for authorizing further extraction by the above company. The sinking of the monitoring well is one of the 24 mandatory environmental compensation measures imposed on the company by the Ministry of the Environment and Natural Resources.[27]

74. Furthermore, the Food and Agriculture Organization of the United Nations has estimated that in 2005, 68 per cent of the water extracted in El Salvador was harnessed by the agricultural sector.[28] Traditionally, wastage by this sector is high and the introduction of clear national policies to rationalize the use of water by agriculture could make more water available for human consumption, particularly in regions where water resources are scarcer and more sensitive to the impact of climate change, as in the Dry Corridor. Assigning priority to use of water for personal and domestic use (drinking, personal and household hygiene, food preparation and washing clothes) in preference to other uses, such as economic activities, is a basic principle of the human rights to water and sanitation.

[24] National Water Mains and Sewers Administration, *Situación Actual del monitoreo de pozos y manantiales captados por ANDA* (Current monitoring situation in wells and springs used by ANDA), February 2016.

[25] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 11.

[26] National Water Mains and Sewers Administration, *Áreas críticas de suministro* (Areas in which supply is at critical levels), March 2016.

[27] www.marn.gob.sv/pozo-en-nejapa-monitoreara-niveles-y-calidad-de-agua-subterranea/.

[28] Food and Agriculture Organization of the United Nations, 2005, available at http://www.fao.org/nr/water/aquastat/countries_regions/Profile_segments/SLV-WU_eng.stm.

F. Impacts on health

75. In El Salvador, dehydration caused by diarrhoea is one of the leading causes of death among children under the age of 5 years.[29] It is also one of the commonest causes of progressive malnutrition, which in turn contributes to higher infant morbidity and mortality.[30] According to the Ministry of Health, cases of acute gastroenteritis and diarrhoea increased by 30 per cent in 2015 in comparison with the previous year.[31]

76. So far in 2016, the average weekly number of cases of acute diarrhoea is 5,764 cases. Between January and May, the highest number of cases occurred in San Salvador (50,885 cases) and the majority affected children under the age of 5 years (78 per cent), followed by adults more than 59 years old (6 per cent).[32]

77. The presumed impact on health of the state of drinking water and sanitation are another reason why the authorities should give priority to ensuring the human rights to these services throughout the country, as well as to a mechanism that effectively monitors and supervises the quality of water for human consumption via a transparent process involving user participation.

IV. Population groups needing special attention

A. People living in rural areas

78. In spite of the significant progress made, which is described in this report, there are still groups, such as the inhabitants of rural areas, who are excluded from proper access to drinking water and sanitation. A major recent effort at diagnosis by the National Water Mains and Sewers Administration has drawn attention to the 618,000 inhabitants of rural areas who lack access to drinking water services, in comparison with 6,000 in urban areas. According to the same data, 99 per cent of those without access to water live in rural areas. Besides this wide gap in access to water and sanitation, this report also draws attention to the marked differences in other spheres, such as the impact of drought, quality and affordability. During his visit, a child told the Special Rapporteur that because of the lack of access to water in his home, he had to spend part of his leisure time going to purchase rainwater from a neighbour's house and carrying it home. The neighbouring family had better facilities for collecting rainwater on its farm. As a result, the family ended up paying its neighbours for untreated rainwater. This example illustrates the distinct reality experienced in rural areas in comparison with urban ones.

B. People belonging to the indigenous populations

79. The indigenous peoples of El Salvador include the Nahuatl, Pipil, Lenca, Kakawira and the Maya Chorti. According to the 2007 census, the 13,319 indigenous people in El Salvador make up approximately 0.2 per cent of the country's total population, although

[29] World Health Organization (2002), information available at www.who.int/nutgrowthdb/database/countries/slv/en/; http://apps.who.int/gho/data/view.main.ghe2002015-SLV?lang=en.

[30] National Family Health Survey (2008), available at www.fesal.org.sv/.

[31] Ministry of Health, *Salud y equidad. Hasta el último rincón de El Salvador. Informe de Labores 2014-2015* (Health and equity. Into the farthest corner of El Salvador. Activities report), May 2015.

[32] Ministry of Health, *Boletín Epidemiológico* (Weekly epidemiological record), week 21 (for 22 to 28 May 2016), available at www.salud.gob.sv/tag/boletines-epidemiologicos-2016/.

this is thought to be a huge underestimate. According to some estimates, the actual figure is between 10 and 12 per cent of the national population.[13]

80. According to a World Bank report, the living conditions of indigenous peoples in El Salvador are unfavourable and unequal in comparison with those of other population groups. In 2003, 61.1 per cent of indigenous people were living in poverty, and 38.3 per cent in extreme poverty.[14] Poverty, which frequently includes lack of access to basic sanitary services and to drinking water, contributes to their precarious health situations. The World Bank has identified areas in which indigenous people experience worse health situations than other sectors of El Salvador's population. For example, the proportion of indigenous children under the age of 5 who suffered from undernutrition was 40 per cent, in comparison with 20 per cent in the country's overall population. In 2010, the Committee on the Rights of the Child expressed its continuing concern about the limited enjoyment of rights by indigenous children and at the incomplete information provided by the State party on that issue.[15]

81. During his visit, a number of representatives of indigenous peoples living in the canton of Pushtan, in Nahuizalco municipality in Sonsonate department told him that they thought that they were at the bottom of the social ladder, even below peasant farmers, in terms of access to goods and services such as water. They also thought that some economic activities, such as farming, reduce their access to water for their requirements. One of them told the Special Rapporteur that when he thinks about access to water for their peoples, "the word of law pales in the sight of money".

82. In 2013 the Special Rapporteur on the rights of indigenous peoples recommended to El Salvador that apart from any constitutional reforms and ratification of the ILO Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169), the Government should develop a legal framework within which the rights of indigenous peoples may be better protected and implemented. Government agencies and officials require specific State policies, together with better legal and regulatory guidance to determine their responsibilities as regards indigenous rights.[16] The Special Rapporteur reiterates the call made by his colleague and the importance of implementing this recommendation, which could also strengthen protection of the rights of indigenous peoples to water and sanitation.

C. People deprived of their liberty

83. People deprived of their liberty have to face particular problems as regards their rights to water and sanitation. In 2009, the Committee against Torture expressed its concern that detention centres in El Salvador lacked the conditions necessary to guarantee proper access to drinking water, health and hygiene.[17]

84. In 2010, the Rapporteurship on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights (IACHR) emphasized that one of the principal shortcomings of the penitentiary system in El Salvador is the severe overcrowding. The lack of proper physical infrastructure effectively denies access to

[13] A/HRC/24/41/Add.2, para. 6.
[14] World Bank, *Perfil de los Pueblos Indígenas en El Salvador* (Profile of Indigenous Peoples in El Salvador), February 2003, p. 33.
[15] CRC/C/SLV/CO/3-4, para. 91.
[16] A/HRC/24/41/Add.2, para. 70.
[17] CAT/C/SLV/CO/2, para. 17.

sanitation services and drinking water and could lead to the spread of respiratory diseases and skin infections among detainees.[18]

85. The mandate of the National Water Mains and Sewers Administration includes responsibility for water supply and wastewater disposal in the prison system. In the course of his mission, the Special Rapporteur had the opportunity to visit La Esperanza prison, in the town of Ayutuxtepeque, the largest penal centre in El Salvador. The prison has a capacity for 1,000 persons, although on the day of the visit it was holding 5,297 detainees. Such severe overcrowding has a heavy impact on water supply and sanitation. Water for the prison is normally supplied by the National Water Mains and Sewers Administration, although the service is frequently interrupted. This year, the prison has been without a water supply, even for the toilets, for several days in a row, compelling inmates to relieve themselves in plastic bags which are thrown away as waste, by no means a satisfactory solution to sanitation.

86. During interviews with detainees, the Special Rapporteur heard complaints and accounts describing access to water and its quality, and access to toilets. One person told him that there were times when he was thirsty for days for lack of drinking water, while others said that they were forced to suck water from a pipe in the wall, and to share the water for drinking and personal hygiene in cells shared by 15 to 25 inmates. Others complained about the physical appearance of the water provided. Many of those interviewed linked the quality and quantity of the water with their state of health, and blamed it for diarrhoea and skin infections. The cells are generally overcrowded with just a hole for defecating and urinating, which is used by 15 to 25 persons, with no privacy. The Special Rapporteur urges the Government to ensure an uninterrupted supply of water of satisfactory quality and proper sanitation for persons deprived of their liberty in this and other prisons in the country, so as to meet its obligations in respect of the human rights to water and sanitation.

87. Furthermore, information was received about the conditions of detention in the so-called "bartolinas" — places intended for short-term detention, but in which, on account of the overcrowding of the prison system, people are often held for long periods, sometimes for over a year. According to the information received, persons deprived of their liberty on these premises may be the victims of grave violations of their rights to water and sanitation.

D. Women and girls

88. Generally speaking, at times of water crisis, such as that in El Salvador during the visit, women and girls, who take on the task of ensuring their families have access to water, are those most affected. During the visit, the Special Rapporteur was able to see how not only women, but girls of some 10 years of age carried home containers holding around 10 litres of water several times a day.

89. In one rural village which the Special Rapporteur visited, women have to carry water to their homes because they are not connected to the water network. Although she might live but five minutes from the water point, counting the time spent queueing and filling her container, a woman could spend 45 minutes, twice a day, fetching water. Such tasks are potential violations of the right to education and to work, especially when they prevent girls and boys from attending school and women from working.

90. The Special Rapporteur was also informed that as a rule, men play a greater role on the rural water boards and take the most important decisions. For example, at Suchitoto, in

[18] Information available at www.cidh.org/Comunicados/Spanish/2010/104a-10sp.htm#_ftn8

Cuscatlan department, where the Suchitoto Colectiva Feminista (Suchitoto feminist collective) carried out a study, 70 per cent of the members of the rural water boards were found to be men, and only 30 per cent women. The same organization also reported that women who rise to positions of leadership have received, according to their sources, a higher number of threats. As an example worth following, the Social Investment Fund for Local Development presented a number of noteworthy experiments in which it guaranteed that in its projects, at least 40 per cent of the leadership of its boards were women.

V. Conclusions and recommendations

91. The Special Rapporteur recognizes the significant progress made by El Salvador in recent decades in improving access to water and sanitation services. These achievements point to the country's ability to extend the benefits of its development to all citizens, and especially to those living in vulnerable circumstances.

92. It should be pointed out that, regardless of whether it delegates these services, the State bears the primary responsibility for guaranteeing the human rights of all persons. In conformity with human rights law, it is incumbent on the State to promote and protect the enjoyment and full realization of human rights for all persons.

93. Investment in water and sanitation has clear benefits for peoples' quality of life and dignity; in addition, the benefits also include savings for the State in the spheres of work and health. For example, it has been estimated that each dollar invested to ensure universal access to basic sanitation services in the home achieves a saving of some three dollars for the State.

94. The Special Rapporteur finds that El Salvador has made significant efforts to achieve proper conditions of water supply and sanitation. The country's levels of coverage show that both the State service providers and local agencies are capable of effectively promoting implementation of the rights to water and sanitation. Nonetheless, further efforts are required to reach out to a number of groups that are still excluded, especially the most vulnerable, and to improve the continuity and quality of the water supply and the conditions of sanitation and wastewater management.

95. States are under the obligation to respect human rights relating to water and sanitation by moving as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable water and sanitation for all, in conditions of dignity and privacy.

96. In this connection, the Special Rapporteur recommends to El Salvador:

(a) That it strengthen the national strategy to cope with climate change, which should include the establishment of an effective mechanism to provide a timely response to future droughts and to their impact on the most vulnerable population, including the rural population;

(b) That it incorporate the right to water and sanitation into its legislation, via a reform of the Constitution and the adoption of a water resources law that gives priority to the needs of those who live in the most vulnerable circumstances, and in this connection that it:

(i) Ratify the reform of article 69 of the Constitution, to which end it is essential explicitly to include in the final text the expression "human rights to water and sanitation" which is absent from the proposal currently under consideration;

(ii) **Guarantee that the general law on water resources currently under consideration assign priority to the human rights to water and sanitation as the cornerstone of any policy and that it clearly state that priority in the use of water should be given to human consumption;**

(iii) **Set up an agency to regulate the water resources policy introduced by this law; the agency should be transparent and participatory, and the State should play a leading role in the management of water resources, with the participation of the sector's main stakeholders, giving priority to that of civil society and of those groups most disadvantaged as regards access to water;**

(iv) **Urgently adopt a framework law on the water and sanitation subsector, which focuses on the realization of human rights, provides guidance for the sector's institutions and guarantees appropriate regulation of services;**

(c) **Draw up the national plan for water and sanitation via a participatory process that involves other service providers, such as the rural water boards and representatives of civil society. The plan should set the normative substance of human rights at the core of all its assessments, proposals and recommendations and make provision for actual measures to ensure that the whole of the country's population has access to services, in conformity with the Sustainable Development Goals, to which El Salvador has subscribed;**

(d) **Set up an independent regulatory body to ensure that those who supply water comply with human rights. Such an agency should ensure genuine participation by the public in decision-making by disseminating appropriate information and guarantee that water and sanitation are affordable for all;**

(e) **Endeavour to ensure universal access to water and sanitation for populations living in the most vulnerable circumstance, including rural populations, those of peripheral urban areas and people living in the street:**

(i) **Where the rural population is concerned, the Special Rapporteur recommends that an assessment be made of the significant and successful efforts of the Social Investment Fund for Local Development, with the aim of replicating them, focusing on the adoption of appropriate and comprehensive solutions and sustainable management models that include both water supply and sanitation services;**

(ii) **The ban prohibiting the national services provider from making water and sanitation services available to illegal settlements should be re-examined, with a view to enabling the inhabitants of these settlements to exercise their rights to use those services;**

(iii) **People living in the street should be guaranteed free facilities providing access to water and toilets;**

(f) **Improve access to water, sanitation and hygiene in schools by adopting a policy that guarantees access in all educational establishments, in both rural and urban areas;**

(g) **Introduce policies to ensure water security and access to water on equal conditions, guaranteeing water supply 24 hours a day 7 days a week. The level of leakage, currently 50 per cent, should be drastically reduced so as to increase the availability of water;**

(h) **Invest in achieving compliance with drinking water requirements throughout the whole country and set up an efficient mechanism effectively to monitor**

the quality of water for human consumption by means of a transparent process involving user participation;

(i) Conduct a critical assessment of the impact of environmental and agrochemical pollutants and of interruptions in water supply on the quality of water for human consumption and of the risks to health;

(j) Adopt a transparent and participatory approach to reviews of water rates, and ensure that the National Water Mains and Sewers Administration carries out research to determine whether progressive block tariffs actually ensure cross-subsidization involving a financial transfer from more affluent persons to the less affluent;

(k) Establish ad hoc programmes to mitigate the financial impact of expenditure on water supply and sanitation by persons without access to collective systems, by setting up social protection measures to ensure that water is affordable;

(l) Introduce clear national policies to rationalize agricultural use of water so as to increase its availability for human consumption, particularly in regions such as the Dry Corridor, where it is in short supply and which are more sensitive to climate change;

(m) Ensure an uninterrupted supply of good quality water and satisfactory conditions of sanitation for persons deprived of their liberty in the country's prisons and "bartolinas"(police jails) so as to guarantee compliance with the country's obligations in respect of the human rights to water and sanitation;

(n) Develop legislation under which the rights of indigenous peoples, including the rights to water and sanitation, may be better protected and implemented.

97. The Special Rapporteur recommends to the international community that it:

- Strengthen the support it provides to El Salvador during emergencies.

98. The Special Rapporteur recommends to the Governments of neighbouring countries that they:

- Establish a cooperative relationship by means of bi- or trilateral treaties which ensure sound management of transboundary river basins and assert that the use of water for human consumption has priority over other uses, setting the principles of the human rights to water and sanitation at their core.

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